

Pursuant to Rules 26, 33, 34, and 36 of the Federal Rules of Civil Procedure, Plaintiff, the United States of America, requests that Defendant Clarke's Incinerators, Inc. ("Clarke's

Incinerators”): (1) admit or answer the following requests for admission within forty-five days, as provided for in the First Case Management Order (“First CMO”) entered in the above-captioned action; (2) answer fully, in writing and under oath, each of the following interrogatories, and serve such answers on the undersigned counsel for the United States within forty-five days, as provided for in the First CMO; and (3) produce the documents requested below, or in lieu thereof serve authentic copies of such documents on the undersigned counsel for the United States within forty-five days, as provided for in the First CMO.

CRITICAL INSTRUCTION TO CLARKE’S INCINERATORS

This discovery request is directed to Clarke’s Incinerators. According to documents both in the public record and in the custody of U.S. EPA, Clarke’s Incinerators first was incorporated in 1967. However, it is the United States’ understanding, and allegation, that Clarke’s Incinerators did not start from “scratch” in 1967. Rather, Clarke’s Incinerators was the incorporated name of a business, or several businesses, that Thomas Clarke had started some years before. **Because the United States alleges that Clarke’s Incinerators is the successor to the liability of this or these previously unincorporated entities, the respondent to this request is obligated to provide answers to the questions set forth below -- to the extent of its knowledge -- for *and any possible predecessor business to Clarke’s Incinerators*.** While the United States understands that Clarke’s Incinerators may deny successor liability, the United States is entitled to seek discovery on this issue, and expects Clarke’s Incinerators to provide information on all possible predecessor businesses. **Note that the definition of “Clarke’s Incinerators” is very broad: it includes “each merged, consolidated, and acquired predecessor or successor (including sole proprietorships), parent, subsidiary, division, and affiliate, each past and present officer, director, employee, agent, servant, and**

representative of each such entity or individual, and each past and present attorney of each such entity or individual.”

Additionally, because Clarke’s Incinerators apparently continues to be incorporated to this day, Clarke’s Incinerators must answer the questions set forth below for the entire period of its incorporation. Indeed, the “Applicable Time Frame” for this request is from January 1, 1955 to the present. Thus, to the extent that Clarke’s Incinerators had successor businesses after the original incinerator(s) was(were) shut down in the 1970s, Clarke’s Incinerators is obligated to answer the requests set forth below for those successor businesses as well.

To the extent that Clarke’s Incinerators has any questions about the scope of these requests, counsel for Clarke’s Incinerators is encouraged to contact counsel for the United States, who will be happy to clarify.

INSTRUCTIONS

A. As to the Interrogatories and Document Requests, the United States incorporates by reference the instructions set forth in the United States’ First Set of Interrogatories and First Request for Production of Documents to Clarke’s Incinerators, Inc.

B. Clarke’s Incinerators shall specifically admit or deny each Request for Admission.

C. The answer to any Request for Admission shall fairly meet the substance of the requested admission.

D. When good faith requires that Clarke’s Incinerators qualify its answer or deny only a part of the matter for which an admission is requested, Clarke’s Incinerators must specify the portions of the Request to which it admits and then deny or qualify its answer as to the remainder. Wherever a denial or partial denial is made, Clarke’s Incinerators shall state each and every fact that forms the basis for the denial or partial denial, and shall identify all documents that support or tend to refute its denial or partial denial.

E. Clarke’s Incinerators shall not give lack of information or knowledge as a reason for failure to admit or deny, unless Clarke’s Incinerators indicates that it has made a reasonable inquiry and indicates that the information known or readily obtainable by Clarke’s Incinerators is insufficient to enable it to admit or deny the matter for which an admission is requested.

F. Clarke’s Incinerators may not object to a Request for Admission for solely on the ground that the matter inquired into presents a genuine issue for trial.

G. Where Clarke's Incinerators interposes an objection to any of the following Requests for Admission, the objection shall state with specificity all bases and grounds for the objection.

H. If, in responding to any of these Requests for Admissions, Clarke's Incinerators encounters any ambiguity in construing either the Request, a definition, or an instruction, state with specificity the matter deemed ambiguous and identify the construction chosen or used in responding to the Request.

I. These Requests include Requests for Admission of the authenticity of various documents. Following some of these Requests, the United States has placed the batestamped identification number. These batestamps are provided for the convenience of Clarke's Incinerators, and do not constitute any portion of the Request for Admission that precedes them. An inaccurate citation shall not constitute sufficient good faith cause for denial. Additionally, these Requests do not seek admissions regarding the batestamp, but pertain solely to the document to which the batestamp is affixed.

DEFINITIONS

A. The United States incorporates by reference the definitions set forth in the United States' First Set of Interrogatories and First Request for Production of Documents to Clarke's Incinerators, Inc.

RULES OF CONSTRUCTION

A. "And/Or." The words "and" and "or" shall be construed conjunctively or disjunctively as necessary to make the discovery request inclusive rather than exclusive.

B. Singular/Plural. The plural of a word shall include the singular and the singular of a word shall include the plural.

C. Verb Tense. The past tense of a verb shall include the present tense and the present tense of a verb shall include the past tense.

REQUESTS FOR ADMISSIONS

1. Admit that Clarke's Incinerators is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

2. Admit that the Skinner Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

3. Admit that there has been a “release,” within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22) of “hazardous substances,” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), into the environment at the Skinner Site.

4. Admit that the continued threat of a release of hazardous substances into the environment exists at and/or near the Skinner Site.

5. Admit that the United States has taken actions in response to the release and/or threat of release of hazardous substances at the Skinner Site.

6. Admit that the United States’ actions concerning the Skinner Site constitute “response” actions, within the meaning of Section 101(23)-(25) of CERCLA, 42 U.S.C. § 9601(23)-(25).

7. Admit that the United States has incurred response costs as a result of the release or threatened release of hazardous substances at the Skinner Site.

8. Admit that the United States continues to incur response costs as a result of the release or threatened release of hazardous substances at the Skinner Site.

9. Admit that cyanide is a “hazardous substance” within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

10. Admit that the copy of the “Skinner Log” that the United States produced in discovery in this action (batestamped 000016-000087) is authentic within the meaning of Federal Rule of Evidence Article IX and does not need to be authenticated for use in this litigation.

11. Admit that the copy of the “Skinner Log” that the United States produced in discovery in this action (batestamped 000016-000087) is a business record within the meaning of Rule 803(6) of the Federal Rules of Evidence.

12. Admit that the copy of the “Skinner Log” that the United States produced in discovery in this litigation (batestamped 000016-000087) is admissible into evidence for use in this litigation.

13. Admit that each copy of each document that Clarke’s Incinerators produced to the United States pursuant to Section 104(e) of CERCLA, 42 U.S.C. § 9604(e), and pursuant to the United States’ discovery requests in this action is authentic within the meaning of Federal Rule of Evidence Article IX and does not need to be authenticated for use in this litigation.

14. Admit that the following document is an admission of Clarke’s Incinerators within the meaning of Rule 801(d)(2) of the Federal Rules of Evidence:

- (1) Sale of Operating Assets and Lease of Certain other Assets to Mid-American Waste Systems, Inc. dated July 31, 1987 and entered into between Martin Clarke and Clarke’s Incinerators, Inc. (batestamped 002058-002354).

15. Admit that the document referenced in Request for Admission 14 is admissible into evidence for use in this litigation.

16. Admit that pursuant to the Sale of Operating Assets and Lease of Certain other Assets to Mid-American Waste Systems, Inc. dated July 31, 1987 and entered into between Martin Clarke and Clarke’s Incinerators, Inc., Clarke’s Incinerators did not sell the land at 2040 E. Kemper Road, Sharonville, Ohio, to Mid-American Waste Systems, Inc.

17. Admit that pursuant to the Sale of Operating Assets and Lease of Certain other Assets to Mid-American Waste Systems, Inc. dated July 31, 1987 and entered into between Martin Clarke and Clarke’s Incinerators, Inc., Mid-American Waste Systems, Inc. did not assume any liabilities of Clarke’s Incinerators, except for customer contracts.

18. Admit that Martin Clarke was the beneficiary and/or distributee of the proceeds of the Sale of Operating Assets and Lease of Certain other Assets to Mid-American Waste Systems, Inc. dated July 31, 1987 and entered into between Martin Clarke and Clarke's Incinerators, Inc.

19. Admit that, for those instances in which you admit that Clarke's Incinerators "delivered" roll off boxes to the Skinner Site (see your Response to Interrogatory No. 10 of the United States' First Set of Interrogatories), Martin Clarke or an employee of Clarke's Incinerators selected the Skinner Site.

20. Admit that the General Electric Evendale Plant utilized Clarke's Incinerators for hauling and incineration services in at least 1972 and 1973.

INTERROGATORIES

1. Identify all customers of Clarke's Incinerators for the period of time between its incorporation and the date that Martin Clarke acquired a controlling interest. To the extent that you cannot recall all customers, identify as many as you can.

2. Describe with particularity the persons who received any distributions from the proceeds of the Sale of Operating Assets and Lease of Certain other Assets to Mid-American Waste Systems, Inc., dated July 31, 1987, and entered into between Martin Clarke and Clarke's Incinerators, Inc., and for each such person, state the date(s) of the distribution, the type of distribution (money, stock, etc), the monetary value of the distribution, and the basis for your estimate of the monetary value of the distribution if the distribution was something other than money. If there were no distributions, explain what happened to the proceeds of the sale.

4. Identify the person(s) who are listed as the record owners of the property at 2040 East Kemper Road, Sharonville, Ohio, from 1955 to the present.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Each document that is identified, referred to or used in any way in responding to the United States' Second Set of Interrogatories to Clarke's Incinerators.
2. Each document that identifies any customer of Clarke's Incinerators, other than the Sale of Operating Assets and Lease of Certain other Assets to Mid-American Waste Systems, Inc. dated July 31, 1987 and entered into between Martin Clarke and Clarke's Incinerators, Inc.
3. Titles and/or deeds relating to the property at 2040 East Kemper Road, Sharonville, Ohio, from 1955 to the present.
4. All documents relating in any way to the transfer to Martin Clarke in 1983 of a controlling interest in Clarke Incinerators.
5. All documents relating to any trusts involving the children of Thomas Clarke, Sr. and Margaret Clarke (including but not limited to the Clarke Family Trust).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June, 2002, I caused a true copy of the foregoing **UNITED STATES' FIRST REQUEST FOR ADMISSIONS, SECOND SET OF INTERROGATORIES AND SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO CLARKE'S INCINERATORS, INC.** to be served by first-class mail, postage prepaid upon the following counsel of record:

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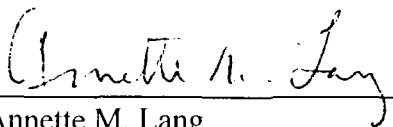
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